agreement did not confer on the 3rd plaintiff "copyright and/or other rights subsisting" in the films. This clause in my view was merely declaratory of the fact that despite the grant of extensive and exclusive right, the 2nd plaintiff would remain as the copyright proprietor. It was precautionary to state that this agreement did not confer any copyright on the 3rd plaintiff and there was an excess of caution when it went on to say "... and/or other rights subsisting ..." in the films. The words "... and/or other rights subsisting ..." following immediately the word "copyright", must be construed as confined to the preceding word "copyright", i.e. the rule of *ejusdem generis* must apply. Further these general words of the agreement about not conferring on the 3rd plaintiff "... and/or other rights subsisting" in the films could not in my view apply or extend to these very express, detailed and particular words of the agreement providing for manufacturing and publishing etc. in relation to the exclusive right granted under the agreement so as to destroy those particular provisions. General words do not derogate from special words, i.e. *generalia specialibus non derogant*. I could not also accept counsel's contention about this clause 5.

I therefore dismissed the defendant's motion and made the orders mentioned above.

Order accordingly.

Solicitors: *Yusof Gulam Lee & Co.; Shearn Delamore & Co.*

INCHAPE MALAYSIA HOLDINGS BHD. v. R.B. GRAY & ANOR.

[O.C.J. (Wan Hamzah J.), January 27, 1984]
[Kuala Lumpur – Originating Motion No. A48 of 1981]

Employment – Termination of employment – Company director whether a workman – Reinstatement – Application for prohibitory order and certiorari – When Hight Court may interfere with decisions of Industrial Court – Industrial Relations Act 1967, ss. 2, 20, & 33B (1).

The applicant terminated by letter the employment of the 1st respondent, who complained to the Director-General for Industrial Relations that he had been dismissed without just cause or excuse. The 1st respondent sought reinstatement under s. 20 of the Industrial Relations Act 1967 (Revised 1976). As the Director-General failed to effect a settlement, the Minister referred the matter to the Industrial Court for an award under s. 20(3) of the Act.

Before the Industrial Court, the applicant contended that the 1st respondent was not a "workman" under s. 20 and consequently the Industrial Court had no jurisdiction to deal with the dispute. The Industrial Court ruled that the 1st respondent was a workman, and stayed proceedings pending the outcome of this originating motion.

Having obtained leave, the applicant applied for (1) an order prohibiting the 2nd respondent, the Industrial Court, from proceeding with the hearing of the complaint; and (2) an order of certiorari to quash the finding of the Industrial Court. The applicant contended that the 1st respondent was not a workman within the meaning of ss. 2 and 20, but a director of the company, and that, being a company director, he was not the type of persons within the scope of s. 20 (1) for the purpose of reinstatement.

Held: (1) upholding the objection of the 1st respondent, the application for certiorari should be dismissed as it was made long after the lapse of six weeks since the finding of the Industrial Court;

(2) the power of the High Court to interfere with decisions of the Industrial Court is limited by s.33B(1) of the Act. When a statute provides an ouster clause, the High Court cannot interfere except in a case in which the inferior tribunal has acted without jurisdiction or it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity;

(3) after the Minister has referred the dispute to the Industrial Court under s. 20(3), it is not open to the appellant to challenge its jurisdiction on the ground that the 1st respondent was not a workman. There is no provision for appeal against its decision which is final and conclusive under s. 33B(1);

(4) it is open to the applicant on proper grounds to ask the High Court for a ruling that the finding of the Industrial Court is a nullity;

(5) the applicant has however, failed to show proper grounds for a ruling of nullity. The application for an order of prohibition should therefore be dismissed with costs.

Cases referred to:

(1) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.
(2) *Assunta Hospital* v. *Dr. A. Dutt* [1981] 1 M.L.J. 115.

ORIGINATING MOTION.

C.V. Das for the applicant.
D.P. Xavier for the 1st respondent.

Cur. Adv. Vult.

Wan Hamzah J.: The First Respondent received a letter from the Applicant which was dated December 3, 1979 and signed by a director, the first paragraph of which reads as follows:–

"Further to our discussion with regard to your future, I am writing on behalf of the Board to formally give notice of termination of your employment . . .".

In the following month the First Respondent wrote a letter to the Director-General for Industrial Relations in which he complained that he had been dismissed without just cause or excuse and asked that action be taken under section 20 of the Industrial Relations Act 1967 (Revised 1976) so that he be reinstated. He was not a member of a trade union. The Director-General failed in his attempts to bring about a settlement and therefore the Minister of Labour and Manpower referred the First Respondent's representations to the Industrial Court for an award, under section 20(3). When the dispute came up for hearing before the Industrial Court the Applicant raised a preliminary point contending that the First Respondent was not a "workman" under section 20 and consequently the Industrial Court had no jurisdiction to deal with the dispute. After hearing evidence and submissions, on August 26, 1981 the Industrial Court made a finding that the First Respondent was a workman. The Industrial Court has not proceeded further to deal with the dispute, in view of this Originating Motion.

Having obtained the necessary leave the Applicant by this Originating Motion applies for:–

(1) an order prohibiting the Industrial Court from proceeding with the hearing of the First Respondent's complaint;

(2) an order of certiorari to remove into this Court for the purpose of its being quashed the said finding of the Industrial Court.

In the Statement supporting the Originating Motion only two grounds are given for the application, as follows:–

(a) The First Respondent who is the complainant in the said Industrial Court case is not "a workman" within the meaning of section 2 and section 20 of the Industrial Relations Act, 1967. At all material times the First Respondent was a director of the company duly appointed by the General Meeting of the company pursuant to its Articles of Association and was not engaged in any dual capacity with the company; and/or

(b) The First Respondent does not qualify as "a workman" for the purpose of section 20 of the said Act in that as the director of a company he is not the type of person within the scope or contemplation of section 20(1) for the purposes of granting the relief of reinstatement. A company director who is subject to appointment or removal by the general meeting of the company by virtue of the provisions of the Companies Act, 1965 and the Articles of Association of the company cannot in law be reinstated by an order made in Industrial Court proceedings under the Industrial Relations Act.

Originally there was only prayer for leave to apply for the order of prohibition. When the *ex parte* application for the leave came up for hearing on July 30, 1982 Counsel for the Applicant added another prayer for leave to apply for the order of certiorari, and leave was granted to apply for both orders. When the application for the orders came up for hearing before me Counsel for the First Respondent raised objection to the application for order of certiorari on the ground that leave to apply for it was made long after six weeks had lapsed since the Industrial Court made the said finding on August 26, 1981. I uphold the objection.

I now proceed to consider the application for prohibition. I must at once refer to section 33B(1) which sets a limit to the power of the High Court to interfere with decisions of the Industrial Court. That section reads as follows:–

"Subject to this Act and the provisions of section 33A, an award, decision or order of the (Industrial) Court under this Act [including the decision of the (Industrial) Court whether to grant or not to grant an application under section 33A(1)] shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court."

The decision of the House of Lords in *Anisminic Ltd.* v. *Foreign Compensation Commission*[1] shows that when words in a statute oust the power of the High Court to review decisions of any inferior tribunal, the High Court cannot interfere except in a case in which the inferior tribunal has acted without jurisdiction or it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It should be noted that in the statement of the grounds to support this application as set out above no mention is made of any contention that the Industrial Court had acted without jurisdiction or that its decision was a nullity. However, since at the hearing before the Industrial Court the question of its jurisdiction was raised I shall deal with that issue. In my opinion, after the Minister has referred the dispute to the Industrial Court under section 20(3) it is not open to the Applicant to challenge its jurisdiction on the ground that the First Respondent was not a workman.

In the case of *Assunta Hospital* v. *Dr. A. Dutt*[2] the respondent claimed that he had been dismissed without just cause and excuse and eventually the matter was referred by the Minister to the Industrial Court. The appellant applied to the High Court for an order to prohibit the Industrial Court from adjudicating in the matter. The application was made on a number of grounds, one of which was that the respondent was not a workman under the Act. The High Court dismissed the application and on appeal the Federal Court upheld the decision of the High Court. When dealing with the ground that the respondent was not a workman the Federal Court stated as follows in its judgment:

"Subject to the steps in section 20(2) to be taken for an expeditious settlement by conciliation and if such steps failed, the Minister may, if he thinks fit, refer the representations to the court (i.e. Industrial Court) for an award. The discretion is with the Minister whether or not to make the reference. In the case under consideration we are not concerned with any question whether the Minister has or has not exercised his discretion correctly. If it should be such a case, the action is not to stop the Industrial Court from hearing the reference but by some application by which the order of reference can be impugned. Once the Minister decides to make the reference and his order is not set aside, the Industrial Court is seized with jurisdiction to hear the case and it is implicit in the Act that the Industrial Court must exercise that jurisdiction. Failure to do so may well result in an order for mandamus . . . . there can be, on a proper construction of this section, no doubt whatsoever that it would be a dereliction of duty to renounce the jurisdiction to hear the reference. In the exercise of its jurisdiction in a reference under section 20(3), the court has a duty to come to a first finding whether or not the claimant was or was not a workman within the definition of a workman in the Act, and secondly whether or not the workman has been dismissed without just cause or excuse . . . . .".

That ruling of the Federal Court should apply equally in the present case as it applies in that case.

Although it is not now open to the Applicant to challenge the jurisdiction of the Industrial Court on the ground that the First Respondent was not a workman, the Applicant is not completely shut off from resisting the First Respondent's claim in the Industrial Court on the ground that he was not a workman. The Applicant can still pursue in the Industrial Court its contention that the First Respondent was not a workman and the Industrial Court should consider and determine that contention. When the Industrial Court considers and determines the question whether the First Respondent was or was not a workman, it should do so not for the purpose of determining whether or not it has jurisdiction to hear the reference but for the purpose of determining whether the First Respondent can be given what he asks for, i.e. reinstatement, because under section 20 he can successfully ask for reinstatement only if he was a workman. The Industrial Court has the jurisdiction to decide correctly or wrongly the question whether the First Respondent was a workman.

Now that the Industrial Court has made a finding that the First Respondent was a workman it is not open to the Applicant to ask the High Court to reverse that decision on the ground that the Industrial Court has made a wrong finding, because there is no provision for appealing against its decision and because its decision is final and conclusive under section 33B(1). However, it would be open to the Applicant on proper grounds to ask the High Court for a ruling that the Industrial Court's finding is a nullity. This is not what the Applicant is asking for by this Originating Motion. The Applicant has not alleged or shown that in arriving at its finding the Industrial Court had acted in bad faith, or had failed to comply with the rules of natural justice, or had failed to take into consideration any matter which it was required by the law to take into consideration, or had been influenced to arrive at the decision by the consideration of a matter which the law does not allow it to take into consideration, so as to ground a ruling of nullity.

For the above reasons I dismiss the application for order of prohibition. I have already stated that I uphold the objection of the Counsel for the First Respondent on the application for order of certiorari, and I therefore dismiss also the application for order of certiorari.

Costs to the First Respondent.

Application dismissed.

Solicitors: *Shook Lin & Bok; D.P. Xavier & Co.*